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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
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10 Antonio M. Aguirre,)	No. CV 04-1182 PHX-DGC
11 Plaintiff,)	
12 vs.)	ORDER
13 Schomac Group, Inc., Schomac Property)	
14 Management, Inc.,)	
15 Defendants.)	

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17 Defendants have filed a motion for attorneys' fees, an amended motion for attorneys'
18 fees, and a memorandum in support of the motions. Docs. ##120, 121, 122. Plaintiff has not
19 responded. For the reasons set forth below, the Court will deny Defendants' motion and
20 amended motion.

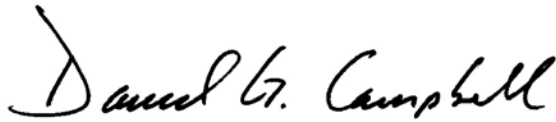
21 Defendants seek to recover attorneys' fees under 42 U.S.C. § 2000e-5(k). The Ninth
22 Circuit has held, however, that fees may be awarded to a defendant under this statute only
23 in "exceptional cases." *Mitchell v. Office of the Los Angeles County Superintendent of*
24 *Schools*, 805 F.2d 844, 848 (9th Cir. 1986). Fees are appropriate only when a plaintiff's case
25 had "no legal or factual basis." *Id.* at 847 (quoting *Christianburg Garment Co. v. EEOC*,
26 434 U.S. 412, 420 (1978)) (emphasis in original). "[A] district court must resist the
27 'understandable temptation to engage in *post hoc* reasoning' once a plaintiff has
28 unsuccessfully pursued a claim." *Id.* (quoting *Christianburg*, 434 U.S. at 421-22).

1 Following a bench trial, the Court concluded that Plaintiff had failed to prove his case.
2 Doc. #111. The Court cannot conclude, however, that Plaintiff's claims had no legal or
3 factual basis. The Court denied Defendants' motion for summary judgment, concluding that
4 Plaintiff had presented sufficient evidence to raise a triable issue of fact. Docs. ##55, 68.

5 Defendants also seek attorneys' fees under Rule 11 of the Federal Rules of Civil
6 Procedure. The Court cannot conclude that Plaintiff's action was baseless. As already noted,
7 the Court denied Defendants' motion for summary judgment.

8 **IT IS ORDERED** that Defendants' motion for attorneys' fees (Doc. #120) and
9 amended motion for attorneys' fees (Doc. #121) are **denied**.

10 DATED this 15th day of August, 2006.

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David G. Campbell
United States District Judge
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